

1-1-2002

City of Lincoln v. Cent. Platte Natural Res. Dist., 638 N.W.2d 839 (Neb. 2002)

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to the district court with directions. As a result, the court of appeals did not address Jurgensmier's second issue regarding the district court's alleged error in overruling Jurgensmier motion for a new trial.

William H. Fronczak

City of Lincoln v. Cent. Platte Natural Res. Dist., 638 N.W.2d 839 (Neb. 2002) (holding that the Department of Natural Resources' decision to deny Saunders County the right to become a party to the City of Lincoln's application to appropriate flows of the Platte River was proper based upon the Department's factual determinations, and that those factual determinations were not arbitrary, capricious or unreasonable).

The City of Lincoln sought to appropriate flows from the Platte River for groundwater recharge. An application for such appropriation was made to the Department of Natural Resources in September of 1993. Notice was published, which specified a deadline of August of 1994 for filing objections. Several timely objections were filed. These resulted in two compromises, which amended the application by reducing the amount of stream flow requested. In 1999, more than five years after the deadline had passed, Saunders County filed an objection. This action necessitated a hearing to determine whether Saunders County could still become a party to the application.

The Department of Natural Resources held that Saunders County had failed to prove: (1) that it had a sufficient interest in the subject matter to become a party; (2) that its participation would be helpful in rendering a decision; and (3) that its participation at the time of filing would not unduly disrupt or delay the proceedings. Noting that any one of these failures alone would be a sufficient reason to deny Saunders County's request, the Department of Natural Resources refused to allow Saunders County to become a party to the action. Saunders County appealed.

Appellate review of the factual determinations of the Department of Natural Resources is limited to situations where those determinations are arbitrary, capricious or unreasonable. The court held that this high standard of review had not been met in the instant case. Ample evidence had been presented for the Department to reasonably reach the conclusions it did, and the absence of certain evidence (including drafts of the hearing officer's findings) was not sufficient to make the Department's findings of fact arbitrary, capricious or unreasonable. The court then held that given these findings of fact, denying Saunders County's request was an appropriate application of the law. Accordingly, the court affirmed the holding of the Department of Natural Resources.

James Siegesmund